

AN ACT
CREATING THE TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 13.7, Code Supplement 2011, is amended to read as follows:

13.7 Special counsel.

1. Compensation shall not be allowed to any person for services as an attorney or counselor to an executive department of the state government, or the head of an executive department of state government, or to a state board or commission. However, the executive council may authorize employment of legal assistance, at a reasonable compensation, in a pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that the department of justice cannot for reasons stated by the attorney general perform the service. The reasons and action of the council shall be entered upon its records. If the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This ~~section~~ subsection does not affect the general counsel for the utilities board of the department of commerce, the legal counsel of the department of workforce development, or the general counsel for the property

assessment appeal board.

2. The executive branch and the attorney general shall also comply with chapter 23B when retaining legal counsel on a contingency fee basis under this section, as appropriate.

Sec. 2. NEW SECTION. 23B.1 Citation.

This chapter may be known and cited as the "*Transparency in Private Attorney Contracts Act*".

Sec. 3. NEW SECTION. 23B.2 Definitions.

For the purposes of this chapter:

1. "*Government attorney*" means an attorney employed by the state as a staff attorney in the attorney general's office.

2. "*Private attorney*" means any private attorney or law firm.

3. "*State*" means the state of Iowa and includes state officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of state government, and any of its agents.

Sec. 4. NEW SECTION. 23B.3 Contracts for legal services.

1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

a. Whether sufficient and appropriate legal and financial resources exist within the attorney general's office to handle the matter.

b. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill required to perform the attorney services properly.

c. The geographic area where the attorney services are to be provided.

d. The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

2. If the attorney general makes the determination described in subsection 1, the attorney general shall follow the procurement process used by the department of administrative services in seeking private attorneys to represent the department of justice on a contingency fee basis, unless the attorney general determines that the procurement process is not feasible under the circumstances and sets forth the basis for this determination in writing.

3. *a.* Except as provided in paragraph "c", the state shall not enter into a contingency fee contract that provides for a private attorney to receive an aggregate contingency fee in excess of the sum of the following:

(1) Twenty-five percent of any recovery up to and including ten million dollars, exclusive of reasonable costs and expenses.

(2) Twenty percent of any portion of any recovery that exceeds ten million dollars up to and including fifteen million dollars, exclusive of reasonable costs and expenses.

(3) Fifteen percent of any portion of any recovery that exceeds fifteen million dollars up to and including twenty million dollars, exclusive of reasonable costs and expenses.

(4) Ten percent of any portion of any recovery that exceeds twenty million dollars up to and including twenty-five million dollars, exclusive of reasonable costs and expenses.

(5) Five percent of any portion of any recovery that exceeds twenty-five million dollars, exclusive of reasonable costs and expenses.

b. Except as provided in paragraph "c", the aggregate contingency fee of any recovery shall not exceed fifty million dollars, exclusive of reasonable costs and expenses, and regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

c. The attorney general may request a waiver from the executive council of the aggregate contingency fee limits in paragraphs "a" and "b" if the attorney general provides a thirty-day notice of the attorney general's intent to request a waiver. The executive council, upon unanimous consent, may grant such a waiver.

4. The attorney general shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the state, including, without limitation, all of the following requirements:

a. A government attorney shall retain complete control over the course and conduct of the case.

b. A government attorney with supervisory authority shall be personally involved in overseeing the litigation.

c. A government attorney shall retain veto power over any decisions made by the contracted private attorney.

d. A defendant that is the subject of such litigation may contact the lead government attorney directly, without having

to confer with the contracted private attorney.

e. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorney and the state.

f. A government attorney with supervisory authority for the case shall participate in all settlement conferences.

5. Copies of any executed contingency fee contract as well as the attorney general's written determination to enter into a contingency fee contract with a private attorney shall be posted on the attorney general's website for public inspection within five business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments thereto. Any payment of contingency fees shall be posted on the attorney general's website within fifteen days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least one year thereafter.

6. Any private attorney under contract to provide services to the state on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with chapter 22.

7. The attorney general shall submit a report to the secretary of the senate and the chief clerk of the house of representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year by February 1 of each year. At a minimum, the report shall include all of the following information:

a. Identify all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year, and for each contract describe:

(1) The name of the private attorney with whom the state has contracted, including the name of the attorney's law firm.

(2) The nature and status of the legal matter.

(3) The name of the parties to the legal matter.

(4) The amount of any recovery.

(5) The amount of any contingency fee paid.

b. Copies of any written determinations made under subsection 1 or 2 during the year.

Sec. 5. NEW SECTION. 23B.4 No expansion of authority to contract.

This chapter shall not be construed to expand the authority of a state agency or state agent to enter into contracts where no such authority previously existed.

Sec. 6. NEW SECTION. 23B.5 Chapter inapplicable.

This chapter shall not apply to legal services contracts under chapter 13B.

KRAIG PAULSEN
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 563, Eighty-fourth General Assembly.

W. CHARLES SMITHSON
Chief Clerk of the House

Approved _____, 2012

TERRY E. BRANSTAD
Governor